

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF VETERINARY MEDICAL
EXAMINERS
CASE NO.: 87-34

IN THE MATTER OF:	:	Administrative Action
	:	
ISHWAR S. PRADIP, D.V.M.	:	FINAL DECISION AND ORDER
License No. 1414	:	

This matter commenced with the filing of a motion for summary decision by the Attorney General of New Jersey, by Alan B. Rothstein, Deputy Attorney General. The facts of this case are that on September 29, 1987 the Superior Court, Law Division rendered a decision in a civil action instituted on April 10, 1986 by Barbara Layman against Ishwar Pradip, D.V.M., respondent herein. The complaint alleged that respondent was negligent in performing a tail docking procedure on February 25, 1986 to three puppies born February 23, 1986. It was also alleged that respondent did not provide proper post-surgical care. After a four day trial before the Honorable Richard S. Hyland sitting without a jury, during which respondent, Ms. Layman and experts on behalf of each party testified and oral argument was made by counsel for each party, the Court rendered judgment in favor of Ms. Layman and against respondent, finding that respondent committed three separate acts of negligence. On November 2,

1987, that decision was memorialized by the entry of a judgment which was affirmed by the Appellate Division on November 14, 1988.

On April 4, 1986, one week prior to instituting the civil action, Ms. Layman filed a complaint against respondent with the Board. An investigatory hearing was held by the Board on April 20, 1987 at which respondent testified under oath. He had previously furnished the Board with his medical records. On April 27, 1989, the Board issued respondent a Uniform Penalty Letter, stating that it's preliminary review indicated that he had committed repeated acts of negligence in the treatment of Ms. Layman's dogs as well as professional misconduct for failing to respond to Mrs. Layman's telephone calls. In lieu of instituting formal proceedings, the Board offered respondent an opportunity to resolve the matter by a civil penalty of \$1,000 plus \$555.75 for investigative costs. Defendant requested a formal hearing and the Attorney General moved for summary decision.

The Attorney General in support of his motion argued that since the issues involved in this proceeding have already been litigated and determined in the action brought by Ms. Layman against respondent, there are no factual issues to be decided in this action, and the matter is therefore appropriate for summary disposition.

The Attorney General further argued that by letter dated April 27, 1989, the Board informed respondent that its

preliminary review indicated that he had committed repeated acts of negligence, in violation of N.J.S.A. 45:1-21(D) (mistakenly cited as N.J.S.A. 45:1-21c in the Uniform Penalty Letter), to wit:

1. The mother had milk fever and an elevated temperature which is an indication of infection, and without any further examination, he docked the tails of her 3 puppies, 2 of which died within 48 hours.

2. The puppies were born smaller than normal for that breed which contraindicated surgery within 3 days of birth.

3. In view of the above, anesthesia should not have been administered.

4. He allowed the client to determine the length that the tail was to be cut without any explanation or advice from respondent as the veterinarian.

5. Respondent performed improper monitoring of the puppies after the surgery.

6. Failure to render the requested treatment to the mother.

As written, the letter specifies 6 separate acts of negligence, however, items 1 and 2 would hold no significance if it were not for respondents improper use of anesthesia. Thus, the Attorney General argued that item 1 and 2 should be merged into item 3. The Attorney General also argued that items 5 and 6 should be merged into the finding of improper follow-up care.

Therefore, essentially the Board found 3 acts of negligence: improper use of anesthesia; allowing the client to determine the length of docking, and failure to render follow-up care.

Two of the three acts of negligence that the Court found respondent had committed are identical to two of the four acts that the Board charged respondent with, to wit: (1) improper use of anesthesia and (2) improper post surgical care.

The Attorney General further argued that it is well established that where identical issues are fully litigated in a prior action by a party thereto (Dr. Pradip), that party is collaterally estopped from attacking and relitigating the same issues in a subsequent action. Thus, the Court in State v. Gonzalez, 75 N.J. 181 (1977) in articulating the general principles stated:

Collateral estoppel is that branch of the broader law of res judicata which bars relitigation of any issue which was actually determined in a prior action, generally between the same parties, involving a different claim or cause of action (Auth. omitted). Ordinarily the scope of the rule is confined to questions of fact or mixed questions of law and fact (Auth. omitted). However, its applicability also extends to questions of law where the claims arise from the same transaction, of "if injustice would result." [Auth. omitted]

Whereas the earlier decisions treated identity of parties as a strict prerequisite to giving conclusive effect to a prior judicial determination, the modern trend has been away from this mutuality requirement and in its place generally, the

question to be decided is whether a party has had his day in court on an issue, rather than whether he has had his day in court on that issue against a particular litigant. The court in Gonzalez, supra, set forth a three prong test to determine whether the doctrine should be allowed. It stated:

... estoppel [should] be allowed where (1) the issue decided in the prior adjudication was identical with the one presented in the subsequent action, (2) the prior action was a judgment on the merits and (3) the party against whom it was asserted had been a party or in privity with a party to the earlier adjudication. [Citation omitted]

Therefore, so long as an identity of issues exists and the prior determination arises from a full and fair opportunity to be heard, a prior adjudication and final judgment on the merits estops a party from relitigating the same issues, Mancuso v. Borough of North Arlington, 203 N.J. Super. 427, 433 (Law Div. 1985); Continental Gen. Company v. Hudson Foam Latex Products, 123 N.J. Super. 426 (App. Div. 1974). It is also clearly established that the doctrine is applicable to administrative proceedings. City of Hackensack v. Winner, 82 N.J. 1, 31-33 (1980).

After due consideration of the prior judicial determination the transcripts of that proceeding and the exceptions, the Board finds as its final decision, the findings of fact and conclusions of law of Judge Hyland with one exception as indicated below. Since all requirements for the application of the doctrine are satisfied, the Board finds that the Courts decision is binding in this action and respondent may not here

attempt to relitigate the issue of whether he committed repeated acts of negligence. Respondent has in essence been afforded three opportunities for the review of his conduct vis a vis Mrs. Hyman, namely, the Board's inquiry in 1987 (at which the Board finds nothing new to have been established) the Superior Court action and the appeal thereof. The issues in the judicial proceeding and here are the same and accordingly the Board finds that the established principle of collateral estoppel precludes respondent from further litigation of this matter in this forum. Accordingly, the Board finds that respondent, as a matter of law, committed at least two acts of negligence. More specifically, acts of negligence found by the Board are improper use of anesthesia and failure to render follow-up care, which constitutes repeated acts of negligence in violation of N.J.S.A. 45:1-21(d). The Board for this finds it to be unnecessary for the to determine whether respondent committed the other act of negligence specified as No. 3 of its Uniform Penalty Letter namely, whether respondent was negligent in the use of tourniquets to control the bleeding of the puppies once their tails were docked.

An application was presented by the Attorney General for costs as part of its Motion for Summary Judgment, for the total amount of \$555.75, which the Board found to be proper and

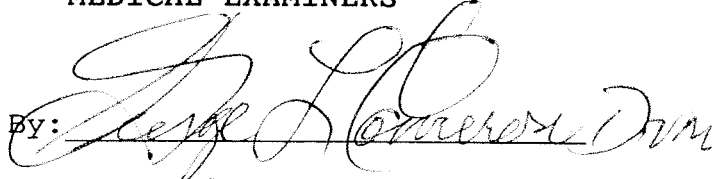
THEREFORE, IT IS ON THIS 9TH DAY OF APRIL , 1991

ORDERED:

1. Respondent shall, within 30 days of the entry date of this Order, pay a civil penalty in the amount of \$1,000.00 by means of a certified check payable to the State of New Jersey and submitted to the Board.

2. Respondent shall, within 30 days of his receipt of an affidavit of costs pay costs in the amount of \$555.75 by means of a certified check payable to the State of New Jersey and submitted to the Board.

STATE BOARD OF VETERINARY
MEDICAL EXAMINERS

By: 
President